

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

MICHAEL E. FROST,
Appellant,

and

STATE OF IOWA (DEPARTMENT OF
ADMINISTRATIVE SERVICES),
Appellee.

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) CASE NOS. 08-MA-13
) 08-MA-14
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PUBLIC EMPLOYMENT
RELATIONS BOARD

DECISION AND ORDER

Appellant Michael E. Frost filed two state employee noncontract grievance appeals with the Public Employment Relations Board (PERB or Board) pursuant to Iowa Code section 8A.415(1). Frost and the State of Iowa, Department of Administrative Services (State or DAS) waived evidentiary hearing before PERB on the consolidated cases and agreed to their submission upon stipulated facts filed with PERB. Both parties filed briefs.

Based upon the entire record in this matter, and having given due consideration to the arguments of the parties, we make the following findings of fact and conclusions of law.

FINDINGS OF FACT

The parties stipulated to the following facts:

a. On August 17, 2005, Frost's supervisor, Mary Ann Hills, gave him a written work directive containing performance expectations (submitted with the parties' stipulation as part of Joint Exhibit 2) which provided, in relevant part:

Per our conversation today regarding my concerns about recent communications I have received from you, I am putting the following performance expectations in effect:

- 1) All future communications will be written in a professional manner
- 2) Communications will not contain accusatory or threatening language
- 3) Communication will be respectful in tone and will not demean any individual
- 4) It is my expectation that every email I send you will be opened regardless of the subject line
- 5) Work assignments will be completed in compliance with HRE rules, policies, procedures, etc. as required to carry out the duties of your position.

If you have any questions or concerns regarding the expectations I have outlined, I will be available to discuss those with you.

b. On November 20, 2007, Hills conducted an investigatory interview of Frost concerning certain emails he had authored and whether they were in violation of the written work directive/performance expectations he had been given in 2005. During this interview Hills provided Frost with a copy of a number of email exchanges (consisting of the Frost-authored emails in question, which ranged in date from September 13, 2007 through October 19, 2007, as well as emails authored by others), a copy of which was attached to the parties' stipulation as "Joint Exhibit 1."

c. On January 25, 2008, Hills issued Frost a five-day "paper" suspension and "final warning," effective that date. Whether the State had just cause for such action within the meaning of Iowa Code section 8A.415(2) is at issue in a separate PERB proceeding, Case No. 08-MA-12.

d. In conjunction with this suspension and final warning, and also on January 25, 2008, Hills presented Frost with a

document, a copy of which was attached to the parties' stipulation as part of "Joint Exhibit 2" and which provided, in relevant part:

Dear Michael,

This letter is to serve as a five day paper suspension and a final warning. This action is being taken as a result of your repeated violation of the performance expectations given to you on August 17, 2005, signed by you on September 23, 2005, regarding the nature in which your email communications are written. The work directive is attached.

On November 20, 2007, I performed an investigatory interview regarding your violation of this work directive. I have found that you are in violation of this work directive.

This more severe discipline is being given due to the past disciplinary actions; on 8/2005, you were given performance expectations because comments in your emails were found to be unacceptable; on 10/2006, you were given a written reprimand for violating these performance expectations; on 4/2007, you were given a 1 day suspension for a violation of a DAS work rule and a violation of the State of Iowa Handbook regarding conduct unbecoming a public employee; on 9/2007, you were given a 3 day paper suspension for violations of department work rules. This 5 day paper suspension and final warning is being given for another violation of his 8/05 performance expectations.

From this date forward, you are expected to continue to follow the performance expectations in the memo of August 17, 2005, signed by you on September 23, 2005 and all DAS work rules. Any further violations of this nature will result in more severe disciplinary action.

e. Between September 13, 2007 and January 25, 2008, Frost authored and sent hundreds of emails in the course of the performance of his duties as an employee of the State of Iowa in its Department of Administrative Services' Human Resources Enterprise.

f. On January 28, 2008, Frost filed a State employee noncontract grievance, alleging that Joint Exhibit 2 [Hills' 5-day suspension letter] was in violation of various provisions of law due to its failure to state the reasons for the discipline which the document addressed. This grievance forms the basis for PERB Case No. 08-MA-13.

g. On February 11, 2008, Hills issued and provided Frost with a document, a copy of which is attached to the parties' stipulation of facts as "Joint Exhibit 3." The document is a memo to Frost, which provided:

February 11, 2008

TO: Michael Frost, Personnel Officer

FR: Mary Ann Hills, Bureau Chief

RE: Addendum to discipline letter issued January 25, 2008 to Michael Frost

Michael Frost filed a 1st step grievance on January 28, 2008 indicating the discipline letter he received on January 25th did not give him enough information to know why he was disciplined. This addendum is being issued in order to help insure Mr. Frost understands why he is being disciplined. At the first step grievance meeting, Mr. Frost was told that his supervisor would issue this addendum to provide clarity.

The discipline letter issued to Mr. Frost on January 25, 2008 stated the following: (a copy is attached to this addendum)

This letter is to serve as a five day paper suspension and a final warning. This action is being taken as a result of your repeated violation of the performance expectations given to you on August 17, 2005, signed by you on September 23, 2005, regarding the nature in which your email communications are written. The work directive is attached.

On November 20, 2007, I performed an investigatory interview regarding your violation of this work directive. I have found that you are in violation of this work directive.

The above language clearly states that Mr. Frost was disciplined for violating his work directive regarding the nature in which emails communications are written. The letter indicated to Mr. Frost that this discipline was a result of the investigatory interview that took place on November 20th, regarding the violation of this work directive.

Mr. Frost sent me an email on January 28, 2008 requesting that he be provided with any information regarding the deficiency he believed existed in the discipline letter. He was provided the investigatory report from the November 20, 2007 investigation (referred to in his discipline letter) and also the complete set of emails that were given to him and discussed with him at that investigatory meeting.

The original letter of discipline was sufficient notice. However to help ensure clarity to Mr. Frost regarding the reason for this discipline, the following is being provided:

The nature in which Mr. Frost's email communications were written regarding the Clarinda Psychology Assistant issue were found to be in violation of his work directive. (These emails were given to and discussed with Mr. Frost at the 11-20-07 investigation)

1. Mr. Frost sent a series of 15 emails because his supervisor gave advice regarding a routine personnel issue to a Department of Human Services (DHS) Division Administer. These emails were written in an unprofessional manner and were found to violate his work directive because the emails alleged violations of laws, rules, the collective bargaining

agreement and included accusatory and demeaning language. Mr. Frost's supervisor has the authority to give advice to a department. Mr. Frost's over reaction to this situation was inappropriate.

2. Mr. Frost sent one of these emails to DHS managers expressing his disagreement with their decision regarding this personnel matter. This resulted in the DHS Division Administrator having to intervene and inform Mr. Frost that DHS had made a decision on this issue and told Mr. Frost to move past this issue.
3. Mr. Frost also unnecessarily involved DAS-HRE's Affirmative Action Officer and Recruitment Coordinator by sending them an email which contained unprofessional and accusatory language toward DHS about this situation.
4. Mr. Frost's emails to HRE staff and to DHS management included repeated use of derogatory words such as "pure sham", even after the situation had been explained to him by his supervisor.

Communications such as these emails are not an acceptable manner for a Human Resource Professional such as Mr. Frost to communicate.

h. On February 12, 2008, Frost filed a State employee noncontract grievance, alleging that Joint Exhibit 3 was in violation of various provisions of law because while it purported to state the reasons for the January 25, 2008 discipline, it was not issued in a timely manner. This grievance forms the basis for PERB Case No. 08-MA-14.

CONCLUSIONS OF LAW

08-MA-13

Pursuant to Iowa Code section 8A.415(1), PERB's decisions in state employee grievance appeals "shall be based upon a standard of substantial compliance" with Iowa Code chapter 8A subchapter IV and DAS rules.

In this grievance appeal, Frost argues that the State did not substantially comply with Iowa Code section 8A.413(16) or DAS rule 11 IAC 60.2(1)(b) because Hills' January 25, 2008 discipline letter failed to provide him with notice of the reasons for his suspension with sufficient specificity.

Iowa Code section 8A.413(16) provides, in relevant part:

8A.413 State human resource management - rules.

The department [of Administrative Services] shall adopt rules for the administration of this subchapter [IV] pursuant to chapter 17A.

. . . The rules shall provide:

. . . .

16. For...suspension...for any of the following causes: failure to perform assigned duties; inadequacy in performing assigned duties; negligence; inefficiency; incompetence; insubordination; unrehabilitated alcoholism or narcotics addiction; dishonesty; unlawful discrimination; failure to maintain a license, certificate, or qualification necessary for a job classification or position; any act or conduct which adversely affects the employee's performance or the employing agency; or any other good cause for...suspension.... The person...suspended shall be given a written statement of the reasons for the...suspension within twenty-four hours after the...suspension....

11 IAC 60.2 provides, in relevant part:

11-60.2(8A) Disciplinary actions. Except as otherwise provided, in addition to less severe progressive discipline measures, any employee is subject to any of the following disciplinary actions when based on a standard of just cause: suspension, reduction of pay within the same pay grade, disciplinary demotion, or discharge. Disciplinary action involving employees covered by collective bargaining agreements shall be in accordance with the provisions of the agreement. Disciplinary action shall be based on any of the following reasons: inefficiency, insubordination, less than competent job performance, failure to perform assigned duties, inadequacy in the performance of assigned duties, dishonesty, improper use of leave, unrehabilitated substance abuse, negligence, conduct which adversely affects the employee's job performance or the agency of employment, conviction of a crime involving moral turpitude, conduct unbecoming a public employee, misconduct, or any other just cause.

60.2(1) Suspension.

. . . .

b. *Disciplinary suspension.* An appointing authority may suspend an employee for a length of time considered appropriate not to exceed 30 calendar days as provided in either subparagraph (1) or (2) below. A written statement of the reasons for the suspension and its duration shall be sent to the employee within 24 hours after the effective date of the action.... (Emphasis added).

Iowa Code section 8A.413 directs DAS to adopt a number of rules, including one requiring that an employee who is suspended be given a written statement of the reasons for the suspension. We think it is apparent that DAS has substantially complied with

Iowa Code section 8A.413(16) by virtue of the existence of rule 11-60.2(1).

We also conclude DAS substantially complied with rule 11-60.2(1)(b) by providing Frost with a sufficiently-specific written statement of the reasons for his suspension.

The suspension notice given to Frost on January 25, 2008, included a copy of the 2005 performance expectations/work directive Frost had received concerning the "nature" in which his e-mail communications were written. The notice referenced the November 20, 2007 investigatory interview at which Frost had been given copies of the e-mails he had authored from September 13, 2007 through October 19, 2007, which were the subject of the investigation. It stated Hills had concluded that Frost was in violation of the work directive. Although the suspension notice was given to Frost approximately two months after the investigatory interview, we think that under the circumstances it reasonably conveyed the message that Frost was being suspended based on the State's conclusion that the content of the e-mails he authored from September 13 - October 19 violated the work directive he had been given.

Frost cites a number of PERB cases in which employees were given written notices of disciplinary action that were arguably more specific than the one he received. Certainly, the notice here could have been more artfully drafted and could have

provided greater specificity. However, the question before us is not whether the notice given to Frost could have been more specific. It is, rather, whether the notice given to Frost was sufficiently specific to substantially comply with rule 11-60.2(1)(b) by reasonably informing him of the basis for the disciplinary action. As noted, we think it was.

Frost also argues that his case is similar to *Carruthers v. State of Iowa (DOC)*, 97-MA-19, in which one of the factors considered by the Board in concluding that the State lacked just cause for disciplining Carruthers was that the notice given him was inadequate to provide sufficient notice as to what activity or inactivity caused his discipline. We think *Carruthers* is distinguishable on its facts, as the notice given there was very general and insufficient to inform Carruthers of what conduct was the basis for his discipline, which is not the case here.

08-MA-14

In this grievance appeal, Frost alleges the State failed to substantially comply with Iowa Code section 8A.413(16) and 11 IAC 60.2(1)(b) because the second, more-specific written statement of reasons for his suspension which was given to him on February 11, 2008 was not provided within 24 hours of the suspension's effective date.

As noted above, it is apparent that the State substantially complied with the rule-making requirements of Iowa Code section 8A.413(16) by virtue of the existence of rule 11-60.2(1).

Having determined in Case No. 08-MA-13 that the first notice given to Frost substantially complied with that rule, we conclude the State did not violate or fail to substantially comply with the rule by giving him additional information about the reasons for his suspension. There is no prohibition against the State providing more information than is required by the rule at a later date.

Based on the foregoing, we enter the following:


ORDER

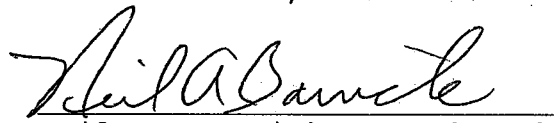
The state employee grievance appeals of Michael E. Frost in PERB Case Nos. 08-MA-13 and 08-MA-14 are hereby dismissed.

DATED at Des Moines, Iowa, this 18th day of November, 2008.

PUBLIC EMPLOYMENT RELATIONS BOARD


James R. Riordan, Chairman


M. Sue Warner, Board Member


Neil A. Barrick, Board Member

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